Local 456, International Brotherhood of Teamsters, AFL–CIO[1] ***and*** **Peckham Materials Corp.** Case 2–CC–2055

May 19, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On November 15, 1991, Administrative Law Judge Steven B. Fish issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel and the Charging Party each filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions[3] and to adopt the recommended Order as modified.[4]

[1] The name of the Respondent has been changed to reflect the new official name of the International Union.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

No exceptions were filed to the judge's findings that the Respondent did not violate the Act by instructing and causing employees of Peckham Materials Corp. to engage in a work stoppage with an object of forcing Peckham to cease doing business with Riccardi Brothers by threatening Peckham that the Respondent would cause employees of Peckham to cease using or handling Peckham products destined for Riccardi, by picketing at Peckham's Portchester facility with an object of forcing Peckham to cease doing business with Riccardi, or by instructing Peckham's employees to engage in a work stoppage with an object of forcing Peckham to cease doing business with Environmental Products and Services, Inc. (EPS).

We adopt the judge's finding that the Respondent violated Sec. 8(b)(4)(ii)(B) of the Act when the Respondent's president, Edward Doyle, told Peckham Attorney Laurence Brown that the Respondent would not allow EPS to operate its truck at Peckham's facility unless it was driven by a member of the Respondent, and that unless Peckham told EPS to put one of the Respondent's members on the truck, Doyle would shut Peckham down. In light of this finding, we find it unnecessary to pass on the judge's alternative finding that even accepting Doyle's uncredited version of his conversation with Brown, Doyle's remarks were still unlawful.

[3] The judge's Conclusions of Law state, inter alia, that the Respondent violated Sec. 8(b)(4)(i) and (ii)(B) of the Act by inducing and encouraging employees of Peckham to refuse to load blacktop for J&B Construction Co. (J&B), with an object of forcing Peckham to cease doing business with J&B. We shall amend the judge's Conclusions of Law to state that the Respondent violated Sec. 8(b)(4)(i)(B) by engaging in this conduct.

[4] In the circumstances of this case, where the Respondent's unlawful conduct was directed at one neutral employer, Peckham, and in view of the fact that the Respondent has been found to have engaged in similar conduct against only one other neutral employer in an conduct against only one other neutral employer in an incident occurring 8 years prior to the Respondent's unlawful conduct against Peckham, we do not believe that the judge's recommended Order, prohibiting secondary activity against Peckham or any other employer, is warranted. We shall, however, prohibit such conduct against Peckham, where an object is to force or require Peckham to cease doing business with J&B, EPS, or any other person.

AMENDED CONCLUSIONS OF LAW

Substitute the following for the judge's Conclusion of Law 4.

''4. On or about June 5, the Respondent induced and encouraged employees of Peckham to refuse to load blacktop for J&B, with an object of forcing Peckham to cease doing business with J&B, in violation of Section 8(b)(4)(i)(B) of the Act.''

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Local 456, International Brotherhood of Teamsters, AFL–CIO, Portchester and Bedford Hills, New York, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

''(a) Inducing or encouraging individuals employed by Peckham Materials Corp., to engage in a strike or refusal in the course of their employment to use, manufacture, process, transport, load, unload, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any person services, where an object thereof is to force or require Peckham Materials Corp. to cease doing business with J&B Construction Co., Environmental Products and Services, Inc., or with any other person.''

2. Substitute the following for paragraph 1(b).

''(b) Threatening, coercing, or restraining Peckham Materials Corp. where an object thereof is to force or require Peckham Materials Corp. to cease doing business with J&B Construction Co., Environmental Products and Services, Inc., or with any other person.''

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT induce or encourage individuals employed by Peckham Materials Corp. to engage in a

strike or refusal in the course of their employment to use, manufacture, process, transport, load, unload, or otherwise handle or work on any goods, articles, materials, or commodities, or to perform any services, where an object thereof is to force or require Peckham Materials Corp. to cease doing business with J&B Construction Co., Environmental Products and Services, Inc., or with any other person.

WE WILL NOT threaten, coerce, or restrain Peckham Materials Corp. where an object thereof is to force or require Peckham Materials Corp. to cease doing business with J&B Construction Co., Environmental Products and Services, Inc., or with any other person.

LOCAL 456, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL–CIO

Laura A. Sacks, Esq. and *David E. Leach III, Esq.*, for the General Counsel.
Wendell Shepherd, Esq. (Roy Barnes, P.C.), of New York, New York, for the Respondent.
Laurence P. Brown, Esq. (Brown, Kreinik & Aaron), of New York, New York, for the Charging Party

DECISION

STEVEN B. FISH, Administrative Law Judge. Pursuant to charges filed by Peckham Materials Corporation (Peckham) on November 28, 1990,[1] the Region issued a complaint and an amended complaint on December 17, 1990, and January 31, 1991, respectively, alleging that Local 456, International Brotherhood of Teamsters, AFL–CIO (Respondent), has violated Section 8(b)(4)(i) and (ii)(B) of the Act, by in substance inducing and encouraging Peckham's employees to engage in a work stoppage, engaging in picketing at Peckham's facility, and threatening, coercing, and restraining Peckham, with an object of forcing and requiring Peckham to cease doing business with J&B Construction Co., Riccardi Brothers, and Environmental Products and Services, Inc. (J&B, Riccardi, and EPS), respectively.

The trial with respect to the allegations in the complaints was heard before me in New York, New York, on February 27 and 28, 1991. Briefs have been received from all parties and have been carefully considered. Based on the entire record, including my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Peckham is a New York corporation engaged in the manufacture and nonretail sale of asphalt paving and related products at its facilities located in Portchester and Bedford Hills, New York. Annually, Peckham purchases and receives at its Portchester and Bedford Hills facilities goods and materials valued in excess of $50,000 directly from points outside the State of New York.

It is admitted and I so find that Peckham is now, and has been at all times material, is an employer and person engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

It is also admitted and I so find that Respondent is a labor organization within the meaning of Section 2(5) of the Act.

III. FACTS

A. *Background*

Peckham owns and operates two plants where it manufactures and sells blacktop, located in Portchester and Bedford Hills, New York. It employs approximately six employees at each of these plants, with three employees at each site, in various job classifications, being represented by and members of Respondent.

J&B and Riccardi are both customers of Peckham, who purchase blackstop from Peckham at these facilities. The employees of J&B and Riccardi are not represented by Respondent, although Riccardi is a signatory to a collective-bargaining agreement with Local 191 of the Teamsters.

EPS is a corporation engaged in business of cleaning up hazardous waste. It was hired to perform cleanup and removal of two excavated storage tanks for Peckham at Peckham's Bedford Hills plant.

EPS which is located in Newburgh, New York, also does not have a collective-bargaining agreement with Respondent.

B. *The J&B Incident*

On June 4, John Foglia, president of J&B, ordered 2000 tons of blacktop from Peckham to be picked up at the Bedford Hills plant over a 2-day period, June 5 and 6. Pursuant thereto, J&B leased 9–10 trucks, which were unmarked, and sent them to Peckham the morning of June 5. The first load of blacktop for all of these trucks was loaded by Peckham's employees, commencing at 6:30 a.m., without incident. The trucks were scheduled to return later in the morning to pick up a second load.

Shortly after the J&B trucks left, Respondent's business agent Richard Jedlicka arrived at the facility and went directly into the control room to speak with Raymond Valentine, Respondent's shop steward. After spending a few minutes with Valentine, Jedlicka left the premises without speaking to any management representatives.

However, Gary Metcalf, Peckham's assistant vice president, noticing Jedlicka's actions, and suspecting that there may be a problem, approached Valentine and asked what was going on? Valentine responded, that Jedlicka had stopped by to find out if J&B Excavating was pulling through on the plant and instructed him not to load J&B Excavating. Metcalf asked Valentine why Peckham could not load J&B? Valentine replied simply that ''Richie said we can't haul. We cannot load their trucks.''

James Lyle, Peckham's plant manager, had a similar conversation with Valentine in the early morning, after Jedlicka had left. Valentine told Lyle that ''Richie said that they could not load J&B trucks.''

Metcalf thereafter telephoned Respondent and spoke to Jedlicka. Jedlicka explained to Metcalf that J&B would not be loaded, because J&B was a nonunion contractor and was doing a large job. Thus, unless he became a union contractor,

[1] All dates hereinafter refer to 1990, unless otherwise indicated.

his trucks would not be loaded. Metcalf asked if J&B was aware of the situation. Jedlicka replied that J&B will find out, because they are not going to get loaded.

Later on in the morning, pickets appeared at the jobsite with signs stating that J&B does not have a contract with Respondent. At this time, no J&B trucks were present, as they had not as yet returned to pick up the next load. Shortly thereafter, Jedlicka drove up to Peckham's driveway. Metcalf in the presence of Lyle approached Jedlicka, and asked why Respondent had not spoken to him regarding this job action. Jedlicka responded that he had tried to reach someone at Peckham but was not successful. Metcalf asked Jedlicka if something could be worked out for that day, and take care of the problem later. He reminded Jedlicka that this was a pretty good size job. Jedlicka answered that it is a large scale job, and therefore J&B will become a union contractor.

Metcalf then indicated to Jedlicka that Respondent's actions were only hurting Peckham, because J&B can go somewhere else to purchase the blackstop. Jedlicka insisted that ''J&B is going to become a Union contractor or he is not going to get loaded.'' Metcalf then threatened to load J&B himself. Jedlicka's response to this comment was, ''If you load him, I'll shut you down.''

Metcalf at that point drove to the Pound Ridge jobsite to speak with Foglia. While Metcalf was on route to Pound Ridge, J&B's trucks arrived for the second load. Valentine refused to load the trucks, so Lyle instructed the truckdrivers to park the truck on the side, while Valentine and the other employees continued to work and service other customers, although the picket line was still up.

By the time Metcalf arrived at Pound Ridge, Foglia had already been informed that his trucks were not being loaded. Metcalf informed Foglia that Respondent was picketing at the plant and the men had been instructed by Respondent not to load his trucks. After some further discussion, Foglia asked Metcalf to call the plant and instruct his trucks to go to O&G Industries in Stamford, Connecticut, to pick up the blacktop. Metcalf did so, and suggested that Foglia call Jedlicka to try to resolve the problem. Foglia called Jedlicka on the phone later that afternoon. Jedlicka told Foglia that, ''you're got to sign this contract, and we'll load you at the plant.'' Foglia responded that he was a small company, this was his first big job, and he could not afford to sign a contract. Jedlicka reiterated that Foglia had to sign the contract if he wanted to buy blacktop at Peckham.

The next day, June 6, Foglia sent his trucks directly to Stamford, and did not attempt to buy from Peckham. No pickets appeared at Peckham, but Jedlicka telephoned and spoke to Valentine. Metcalf then asked Valentine if there was a problem? Valentine replied that there is no problem, but Jedlicka wanted to know if J&B was in. Valentine added that he told Jedlicka that J&B had not been in, and had gone to Stamford to pick up their blacktop. Later on that day, Metcalf again went to see Foglia at the jobsite in Pound Ridge. Metcalf told Foglia that Peckham wanted to sell material to him, and urged Foglia to call Respondent and try to work something out. Foglia agreed to call Jedlicka from Metcalf's car phone. Foglia did so and asked Jedlicka if he could send his trucks back to Peckham to purchase materials. Jedlicka responded that Foglia would have to sign a contract with Respondent if he wanted pick up at Peckham. Foglia replied that he (Jedlicka) was being unfair. Jedlicka answered that Foglia had a big job and he must use Respondent's drivers on such a job. Jedlicka did not during either of his two conversations with Foglia, ask Foglia what wages or benefits he paid to his employees.

Later on that day, Laurence Brown, Peckham's attorney became involved in the dispute. He had conversations with John Peckham and Foglia during which Brown learned about the problem, and Foglia had stated that J&B would be willing to use Respondent's trucks and employees for big jobs like the current one, but he could not afford to sign a contract with Respondent.

Brown then called Edward Doyle, Respondent's president and business manager. Doyle informed Brown that J&B had gotten a bid for a job in Pound Ridge which was in Respondent's territory and J&B had to sign a contract with Respondent in order to get that work. Doyle added that he would not allow J&B to be loaded at Peckham unless J&B signed a contract with Respondent. Brown informed Doyle that J&B was a small contractor with one truck, that does mainly driveways, and simply could not afford a union contract. However, Brown explained that J&B had offered to use Respondent's trucks on any future large job that J&B might obtain. Doyle agreed to the proposal.

Shortly thereafter, Metcalf was instructed by John Peckham to inform Foglia that he could come back the next day and get loaded at Peckham. J&B's trucks did return the next day and had no problem getting loaded.

There have been no further instances of picketing by Respondent with respect to J&B, and J&B has continued to purchase blackstop from Peckham on an as needed basis, as J&B had done before the incident in question.

The above description of events and conversations is based on a compilation of the credited testimony of Metcalf, Lyle, Foglia, Brown, Jedlicka, Doyle, and Valentine. In most instances of conflict between the testimony of the General Counsel's witnesses and that of Respondent, I have credited the former's versions of events and discussions. In general, I found the mutually corroborative and consistent testimony of Foglia, Metcalf, Lyle, and Brown to be more believable and reliable than that of Valentine, Jedlicka, and Doyle.

Thus, while Jedlicka and Valentine concede that they did have a discussion about J&B on June 5, they contend that the conversation occurred while the J&B trucks were first being unloaded, and that Valentine in response to an inquiry from Jedlickia about J&B, told Jedlicka that J&B was being unloaded at that time. They both further testified that Jedlicka did not say nor did Valentine ask what action the Union was going to take, nor did he give Jedlicka any instructions as to what to do about loading J&B. I find this testimony to be implausible and not credible. I note significantly that Doyle does not corroborate Jedlicka as to the timing of Respondent's awareness of J&B's appearance and its picketing. Thus, contrary to Jedlicka's testimony, Doyle asserts that Jedlicka told him that the first round of J&B trucks had already been loaded, and at that time he instructed Jedlicka to put up a picket line. Jedlicka and Valentine however insist that the pickets were put up while the first load was being unloaded, and that when Valentine was told by a driver of the picketing against J&B, he without seeing the pickets or the signs, refused to continue loading.

In my view, Doyle's testimony on this issue, coupled with the consistent and corroborative testimony of Foglia, Metcalf,

and Lyle establish as I have found above, that the picketing began after the J&B trucks had left after having completed the first load. I also find that the testimony of Valentine and Jedlicka that they did not make the remarks that I have related above that they made to Foglia, Lyle, and Metcalf concerning the refusal of employees of Peckham to load J&B, is seriously undermined by their inaccurate testimony as to the timing of the picketing and the refusal to load. I also find it highly unlikely, that as insisted upon by Valentine, and Jedlicka, that they had no disucssion as to what action the Union was going to take, or about the picketing that was ordered, or about what Respondent wanted employees to do.

While, as I have noted in most instances, I have credited the General Counsel's witnesses as to their versions of disputed conversations, I have credited Doyle over Brown with respect to one area of conflict. Thus, Brown testified that even after he related to Doyle that J&B had agreed to use Respondent's trucks on all future large jobs, Doyle continued to insist that J&B must sign a contract with Respondent, but Respondent would agree not to enforce the contract against J&B's small jobs. I have not credited Brown as to this portion of his testimony, since Respondent immediately after the conversation ordered a cessation of any picketing and John Peckham instructed Metcalf to tell Foglia that he could resume picking up at Peckham. This suggests as testified to by Doyle, that he agreed to Brown's proposal that J&B's agreement to use Respondent's trucks on future large jobs was sufficient to resolve the instant dispute. As related above, I have nonetheless credited Brown that Doyle did tell him during their conversation and prior to Brown's offer of settlement, that he (Doyle) would not allow J&B to load at Peckham unless J&B signed a contract. I noted that Doyle's remark in this regard was similar to statements made by Jedlicka and Valentine to Metcalf, Lyle, and Foglia.

C. *The Riccardi Incident*

Riccardi is a construction firm which has been a customer of Peckham for many years, and had no difficulty with pickups of blacktop until July 1990. Riccardi's employees are represented by Local 191 of the Teamsters.

On July 17, Joseph Riccardi, Riccardi's president received a phone call from Bernard Doyle. Doyle, after confirming the fact that Riccardi had received a patching job in Portchester, demanded that Riccardi use a Local 456 driver for the job. Riccardi refused to do so, and after some words back and forth, Doyle concluded the conversation by stating, ''We'll see about that.''

After that conversation, Bernard Doyle told his brother Eddie that he (Bernard) had found out that Riccardi had received a contract for a job in Portchester usually performed by a contractor with whom Respondent has a contract. Bernard told Eddie about his conversation with Joseph Riccardi, and that Riccardi would not agree to put on a teamster on his truck. Eddie instructed Bernard to picket Riccardi at the Portchester jobsite and to follow the truck wherever it goes. Bernard arranged for three or four pickets, including Ken Madeiras, and instructed them to picket Riccardi at Portchester and to follow the truck and picket it wherever it stopped.

The next morning, Madeiras and the other pickets arrived at the Main Street jobsite in Portchester with signs. However, they did not picket there, since the truck left the jobsite. The pickets followed the truck to Peckham's facility in Portchester. When the trucks arrived at Peckham, the pickets got out of their cars, with signs reading ''Riccardi Bros. Local 456 no contract.'' The pickets walked up and down at the entrance gate of the facility with the above signs.

Meanwhile, Riccardi's truck pulled up to make a pickup of blacktop. The truckdriver placed the order at the dispatching office, and got in line behind other trucks waiting to be loaded. When the Riccardi's truck pulled underneath the plant, ready to be loaded, employee Robert Speno the plant operator, who testified credibly that he had seen the picket signs from the batching room where he was stationed, refused to load the truck. Rick Brown, Peckham's plant manager called Speno over the intercom and asked if there was a problem. Speno replied there was no problem, but he was not going to load the Riccardi truck. Speno told Brown he had seen picket signs with Riccardi's name on it, and he would not load the truck. Brown said nothing further, and instructed the driver to pull his truck out of line, so that Peckham's employees could continue to service other customers.

The employees continued to load other trucks, and Riccardi's truck remained over on the side. Later on that morning, Joseph Riccardi received a call from his brother who told him there was a picket line at Peckham and his truck was not being loaded. Riccardi then went to his office and received a call from his driver, Frank told Riccardi that there ''were pickets out here and they won't load me.'' Riccardi told Frank that he would be right there.

Riccardi then proceeded to drive to the plant and spoke to Brown and Jack Reynaud, another official of Peckham. They told Riccardi, ''we can't load you.'' Riccardi then instructed his driver to get in line, pull his truck under, turn off the keys, and stay there until loaded. Thus, if the Riccardi truck was not loaded, other trucks in line behind would also not be serviced. Subsequently, a Peckham official asked Riccardi to pull his truck out of the way, but Riccardi refused stating that ''nobody's getting loaded in here unless I get loaded.''

At that point, Brown and Reynaud went to the batching room and gave a direct order to Speno and to Bob Grant, Respondent's shop steward, to load Riccardi's truck. They refused. After another direction and a refusal, Brown and Reynaud told Grant and Speno they were suspended for 3 days and to get off the property. Speno and Grant went outside the gate and stood by, speaking to the pickets.

Riccardi's truck was loaded by Brown and left the premises. When the truck left, some of the pickets left and followed the truck back to the jobsite at Portchester. However, it does not appear that they engaged in any picketing at the Portchester site.

Meanwhile, some of the pickets remained at the gate at Peckham for about 15 minutes after Riccardi's truck left, and were speaking with Grant and Speno. However, the pickets had at that point taken off their picket signs. At that time, Brown instructed Speno and Grant to come back to work, which they did. There were no further incidents of picketing at Peckham with regard to Riccardi.

Speno and Grant both insist that they had no conversations with any officials of Respondent or among themselves about the picket line or about whether they should refuse to load Riccardi's truck. They both credibly testified that they refused to load the truck, because they saw the picket line

which referred to Riccardi. While they both admitted that they had loaded Riccardi before and had loaded other nonunion companies, the difference in this case was only the picket line and an individual decision on their part not to load because of the picket signs.

Additionally on the same day of the picketing, Eddie Doyle received a call from Laurence Brown. Brown complained to Doyle that there were pickets at Peckham's jobsite regarding Riccardi, and that Doyle had not called Brown as promised.[2] Doyle responded that he did not even know that there were pickets at Peckham. Doyle explained that he had instructed his men to follow Riccardi's truck and to picket wherever the truck stopped. However, since Doyle did not know where the truck would be going, and there are 10 blacktop plants in the county, he was not aware that Peckham would be picketed.

The above description of the events of July 17 and 18 is based on a compilation of the credited testimony of Grant, Speno, Doyle, Madeiras, Riccardi, Rick, and Laurence Brown.

In this instance, I found the mutually corroborative and consistent testimony of Respondent's witnesses to be more persuasive, and in most areas of dispute have credited their testimony over that of the General Counsel's witnesses where their testimony conflicts. Most significantly, I do not credit the testimony of Rick Brown that Grant told him, in the presence of Speno, that the hall directed him not to load Riccardi. I note in this regard the absence of any evidence that Respondent's officials had any communication with Grant prior to the picketing and the subsequent refusal to load. Since there is no evidence that Respondent knew that Riccardi was coming to pick up blacktop at Peckham, it is not likely that it could have notified the employees not to load prior to Riccardi's appearance. This fact lends credence to my conclusion that Speno and Grant were testifying truthfully when they denied making any statements to Brown that the hall had instructed them not to load.

D. *The EPS Incident*

On November 26, EPS began working for Peckham at the Bedford Hills facility, performing hazardous waste cleanup. On November 27, Valentine approached Lisa Hauer, EPS's project coordinator, and told her that his ''boss'' would like to speak with her on the telephone. Hauer agreed and walked to Peckham's trailer, where she was handed the phone by Valentine who again repeated ''it's my boss that wants to speak with you.'' Jedlicka was on the line, and after identifying himself, told Hauer that he wanted EPS to use a Local 456 driver on EPS's truck. Hauer replied that she was not in a position to hire a driver from an outside source, particularly since EPS's drivers must be trained by OSHA. Jedlicka responded that if EPS did not use one of Respondent's drivers, he would have not choice but to ''shut the operation down.'' Hauer told Jedlicka to ''do what you have to do,'' and hung up the phone.

Later on that same day, Metcalf received a call from Peckham's receptionist who informed him that Ray Valentine has a problem with EPS. Metcalf asked to speak with Valentine, and inquired what the problem was with EPS. Valentine informed Metcalf that EPS had brought in a low bed trailer and a dump truck. Valentine added that he had asked the driver of the truck to produce a union card and found out EPS was nonunion. Metcalf told Valentine that EPS is an outside contractor performing environmental cleanup and had nothing to do with the operations of the plant. Valentine responded that he had called ''the hall,'' and was told that EPS had to have a Local 456 driver to either deliver or take material out of the site.

Also on November 27, Laurence Brown received a call from Edward Doyle. Doyle informed Brown that Peckham was using a company, EPS to remove hazardous waste materials, and EPS would not use a Local 456 driver to haul the material. Brown, after talking with John Peckham, told Doyle that Peckham had hired EPS an outside contractor as the lowest bidder on a contract ordered by the Department of Environmental Conservation. Doyle replied that he did not care who Peckham used, there was no way that he was going to allow materials to be hauled in and out of Peckham's facility in Bedford, without a Local 456 driver on the truck. Doyle added that unless Peckham tells EPS to do so, he was going to shut the Bedford facility down. Brown answered that if Doyle did that, Peckham would have no choice but to go to the NLRB. Doyle concluded the conversation by stating that ''you do what you have to do, I'll do what I have to do.''

That same day, Brown sent a letter to Doyle, dated November 27. The letter refers to previous disputes between Respondent and Peckham (presumably, J&B and Riccardi) wherein Respondent induced and encouraged Peckham employees to refuse to perform services for Peckham's customers, and that this action caused Peckham to lose money and business. The letter continues, ''today you have notified me that you intend to direct Peckham's employees at its Bedford facility to stop work, effective tomorrow, because an outside contractor . . . does not employ members of Local 456.''

Brown concludes by viewing this as a violation of the National Labor Relations Act, and threatens legal remedies if Local 456 continues, but offers to meet to resolve the situation.

On or about November 27, EPS received by Fax a copy of a Western Union telegram from Doyle. The telegram asserts that Local 456 has conducted an investigation of wages and other economic benefits that EPS was paying, and have determined that EPS is not paying the standard area wages and benefits. The telegram ads that if EPS continues in not meeting the area standards, Respondent will commence area standards picketing for the purpose of advising the public of the situation.

Notwithstanding this telegram, it is clear that Respondent made no attempts to contact EPS to determine what wages or benefits it paid to employees and in fact Doyle admitted that Respondent made no attempt to do an area standards investigation of EPS.

The next day, November 28, Respondent placed a picket line at the entrance to Peckham's Bedford Hills facility, with signs reading EPS has no contract with Local 456. Employees of Peckham upon seeing the picket line, refused to cross,

[2] After the J&B incident previously discussed, Doyle promised to call Brown whenever the Respondent intended to picket Peckham.

and did not perform any work for Peckham[3] on that day. Additionally at least one customer of Peckham, Rossi, Inc., had a truck come to the site to pick up blacktop, but the driver refused to cross the line. Subsequently, Jedlicka received a call from an official of Rossi who asked what the problem was since his driver had refused to cross a picket line. Jedlicka told him that Respondent was picketing because EPS was a nonunion outfit working at the site. The conversation concluded.

EPS has not returned to the jobsite to complete its work as of the time of the hearing. There has also been no further picketing by Respondent at that location.

My findings concerning the events regarding Respondent's actions with respect to EPS, are once again based on a compilation of the credited portions of the testimony of various witnesses, in this case, Doyle, Laurence Brown, Metcalf, Jedlicka, and Valentine. Although Doyle denies telling Brown that Respondent would close the place down, as I have found above, he does admit to telling Brown that Respondent intended to put up a picket line at Peckham's jobsite, because EPS had a nonunion truck on the job. Doyle further admits that he told Brown that since there is only one entrance to the site, if Respondent puts up a picket line there, there would be a problem in that employees would not cross the picket line and other companies attempting to come into the site may not cross. Indeed, he also added that in Doyle's opinion 90 percent of the union people are not going to cross the picket line.

I note that Brown's testimony in this regard is corroborated by the testimony of Hauer, whom I found to a most believable witness, as to what Jedlicka said to her about Respondent's intentions.

IV. ANALYSIS

A. *The J&B Incident*

I have found above that on June 5, Metalf, Peckham's assistant vice president had two conversations with Richard Jedlicka, Respondent's business agent, both before and after the picketing at Peckham's premises began. In both conversations, Jedlicka informed Metcalf that unless J&B became a union contractor, J&B's trucks would not be loaded at Peckham's facility. Edward Doyle, Respondent's president made a similar remark to Laurence Brown, Peckham's attorney on June 6, telling Brown that he would not allow J&B to be loaded at Peckham unless J&B signed a contract with Respondent.

These statements by Respondent's agents constitute threats to Peckham that it would cause Peckham's employees to engage in a work stoppage by refusing to load J&B's trucks, with an object of causing Peckham to cease doing business with J&B, in violation of Section 8(b)(4)(ii)(B) of the Act. *Sheet Metal Workers Local 104 (Losli International)*, 297 NLRB 1078 (1990); *Laborers Local 464 (Lycon Inc.)*, 304 NLRB 544 (1991), *Longshoremen Local 13 (Egg City)*, 295 NLRB 704 (1989), *Carpenters Local 316 (Thornhill Construction Co.)*, 283 NLRB 81, 85 (1987).

Additionally, after Jedlicka's second unlawful threat to cause employees not to load J&B, Metcalf indicated that he would load J&B himself. This prompted Jedlicka to threaten that if Metcalf loaded J&B, ''I'll shut you down.'' This remark is another instance of an unlawful threat to Peckham in further violation of Section 8(b)(4)(ii) and (B) of the Act. Cf. *Iron Workers Local 197 (Del Guidice Enterprises)*, 291 NLRB 1–2 (1988); *Carpenters Local 102 (Mewiswinkel Interiors)*, 260 NLRB 972 (1982).

I have also found that on June 5 after Jedlicka had a conversation with Valentine, Respondent's shop steward, Valentine told both Metcalf and Peckham's plant manager James Lyle, that Jedlicka had instructed him not to load J&B trucks.

Shortly thereafter, when J&B's trucks arrived to pick up the second load, Valentine refused to load the truck, while continuing to load other trucks and service other customers.

Respondent contends that this refusal to load was due solely to the presence of a lawful picket line that had been put up by Respondent prior to the J&B's trucks' arrival. I do not agree.

While there is no direct evidence that Jedlicka instructed Valentine not to load J&B's trucks, and in fact Jedlicka and Valentine vigorously deny any such instructions, it is well settled that it is permissible to rely on circumstantial evidence to establish that a union is responsible for inducing employees to engage in a work stoppage or refuse to process or handle or work on any goods. *Operating Engineers Local 12 (Associated Engineers)*, 270 NLRB 1172, 1175 (1984); *Newspaper & Mail Deliverers (Gannett Co.)*, 271 NLRB 601, 66 (1984); Cf. *Teamsters Local 705 v. NLRB*, 820 F.2d 449, 451–452 (D.C. Cir. 1987).

Here the circumstantial evidence is compelling that Jedlicka, contrary to the testimony of Respondent's witnesses, did in fact instruct Valentine an employee of Peckham and Respondent's shop steward to refuse to load J&B's trucks. Thus, Valentine's statements to Metcalf and Lyle that Jedlicka so instructed him constitute admissions against Respondent that Jedlicka made such statements to Peckham's employees. Moreover, the aforementioned unlawful threats made by Jedlicka and Doyle to representatives of Peckham to the effect that Respondent would not allow J&B to be loaded at Peckham unless it signed a contract with Respondent, are further supportive of my conclusion that Respondent did in fact instructed Peckham's employees not to load J&B's trucks.

Such instructions by Respondent, to the employees of a secondary employer, constitutes an inducement or encouragement of an ''individual employed by any person engaged in commerce . . . to engage in, a strike or a refusal in the course of his employment to . . . process transport or otherwise handle or work on any goods,'' in violation of Section 8(b)(4)(i)(B) of the Act. *Egg City*, supra; *Thornhill Construction*, supra at 84; *Losli International*, supra. I so find.

Turning to the picketing itself, the Board has recognized that ascertaining a union's motivation becomes difficult in cases involving ''ambulatory'' or ''common'' situs situations, i.e., where the primary and secondary employers are engaged in operations at the same location. *Operating Engineers Local 675 (Industrial Contracting Co.)*, 192 NLRB 1188, 1191 (1971). The Board has developed criteria in *Sailers Union (Moore Dry Dock)*, 92 NLRB 547, 549 (1950), to help resolve the question of whether a union has demonstrated the proscribed motive of enmeshing a neutral em-

[3] This also included, in addition to the Teamsters operating engineers and electricians employed by Peckham.

ployer when it pickets at locations where both the primary and secondary employer are present. Thus picketing will be considered presumptively valid if; (a) the picketing is strictly limited to times when the site of the dispute is located on the secondary employer's premises; (b) at the time of the picketing, the primary employer is engaged in its normal business operations at the common situs; (c) the picketing is limited to places reasonably close to the location of the situs; and (d) the picketing discloses clearly that the dispute is with the primary employer. However, the *Moore Dry Dock* standards set forth above are, evidentiary rules only, and are not a conclusive guide for determining the legality of common situs picketing. *Teamsters Local 506 (E. J. Dougherty Oil)*, 269 NLRB 170, 175 (1984). In ascertaining the Union's object, the Board looks at the totality of the Union's conduct in order to determine the Union's true purpose. *Industrial Contracting*, supra at 1192. Thus picketing although in compliance with *Moore Dry Dock*, and for a lawful object, may be unlawful if there is other evidence establishing that the picketing also has an unlawful objective. *Electrical Workers IBEW Local 44 (Rollins Communications)*, 222 NLRB 99 (1976); *Electrical Workers IBEW Local 11 (L. G. Electric Contractors)*, 154 NLRB 766, 767–768 (1965).

In applying these principles to the case at hand, it is first necessary to consider the *Moore Dry Dock* standards. The General Counsel argues that Respondent's picketing failed to meet the *Moore Dry Dock* criteria of limiting the picketing at Peckham to times when J&B was present at the facility. The General Counsel contends that this factor is sufficient to establish an unlawful objective of Respondent's picketing. *Electrical Workers IBEW Local 595 (Hayward Electric Co.)*, 261 NLRB 707, 710 (1982).

I do not agree. Although I have found above that Respondent picketed at Peckham during a brief but undetermined period of time, when J&B's trucks were not present, I note that it was clear to all concerned that the J&B trucks were expected to return later that day to pick up a second load of blacktop. Thus, since J&B was scheduled to return, and in fact did return to Peckham to attempt to pick up the next load, J&B's temporary absence at the time of the picketing, does not establish that the picketing has violated the *Moore Dry Dock* standards, nor that the picketing was unlawful. *Industrial Contracting*, supra at 1189–1190, *Plumbers Local 388 (Daily Heating)*, 280 NLRB 1260, 1272–1274 (1986).

However, as noted above, compliance with the *Moore Dry Dock* standards, does not necessarily immunize the picketing, and it is appropriate to evaluate Respondent's other conduct in order to determine whether an unlawful object existed. Here, in my judgment, the record discloses ample evidence which is more than sufficient to establish Respondent's unlawful objective. Thus, Respondent's previously described unlawful actions of inducing employees to refuse to load J&B trucks, and its unlawful threats to three different representatives of Peckham to the effect that J&B will not be loaded unless J&B signs a contract with Respondent, all provide substantial evidence that an object of the picketing was to enmesh Peckham a neutral employer in its dispute with J&B, by forcing Peckham to either cease doing business with J&B or force J&B to sign a contract with Respondent. *Rollins Communications*, supra at 101; *L. G. Electric*, supra; *Associated Engineers*, supra at 1175; *Thornhill Construction*, supra at 84; see also *Electrical Workers IBEW Local 369 (Garst Receiver Construction Co.)*, 229 NLRB 68, 69 (1977).

It is also worthy of note in this regard that Respondent never even contacted J&B prior to the picketing, and its only conversations with J&B were initiated by representatives of Peckham. Indeed both conversations between Foglia of J&B and Jedlicka were made at the suggestion of Metcalf, one of which took place from Metcalf's car. Finally, the picketing ended, only after Peckham's officials had obtained an agreement from J&B to use Respondent's trucks on all future large jobs, and communicated such a commitment to Respondent. These circumstances further demonstrate the unlawful objective of Respondent of enmeshing Peckham in its dispute with J&B. *E. J. Dougherty*, supra at 176.

Accordingly, based on the foregoing, I conclude that Respondent's picketing at Peckham's premises on June 5, was violative of Section 8(b)(4)(i) and (ii)(B) of the Act.

B. *The Riccardi Incident*

The complaint alleges that Respondent acting through its Shop Steward Grant, instructed individuals employed by Peckham to engage in a work stoppage and caused employees of Peckham to engage in a work stoppage at its Port Chester facility, and that Grant also threatened Peckham by informing Peckham that Respondent would cause employees of Peckham to cease using or handling Peckham products destined for Riccardi. Both of these allegations are premised primarily on Brown's testimony which I have not credited, that Grant told him in the presence of Speno, that the hall had directed Grant not to load Riccardi.

Having discredited Brown's testimony in this regard, I find the evidence insufficient to establish that Respondent has violated the Act by these alleged acts or by its picketing on July 19 at Peckham's Portchester facility.

The General Counsel argues that it is not plausible to believe the testimony of Grant and Speno that they decided on their own not to load Riccardi because of the picket line. She asserts that if that had been the case, the employees would have engaged in a complete work stoppage, and not continued as they did to service customers other than Riccardi. Therefore, it is urged that I conclude that the employees must have been acting under instructions from Respondent. I find such speculation to be unwarranted, and not supported by the record. I find it just as plausible as testified to by Grant and Speno that when they saw the picket sign directed at Riccardi, that they decided to honor the picket line only with respect to loading Riccardi trucks. Indeed the very purpose of the *Moore Dry Dock* requirement that the signs clearly identify the primary employer with whom it has a dispute, was inserted to permit an employee to make such a choice, and to restrict their honoring the picket line to the primary employer's activities. This conduct, contrary to the General Counsel's assertions, evidences an intent not to unduly enmesh Peckham in Respondent's dispute with Riccardi, and cannot be construed as demonstrative on an unlawful objective.

Both the Charging Party and the General Counsel stress Shop Steward Grant's admission that he regularly attends membership meetings, and that Respondent's intentions to picket are frequently discussed at such meetings. However, this admission is not significant, since Grant credibly testified that the possibility of Riccardi being picketed was never

mentioned at any such meeting. More importantly, Respondent did not know that Riccardi was scheduled to pick up at Peckham, and therefore as I have concluded above, had no opportunity to issue any directives to Grant or Peckham's employees not to load Riccardi's trucks.

As for the picketing itself, there is no question and it is not even disputed by the General Counsel that such picketing complied with the *Moore Dry Dock* standards.[4] I also conclude that the record is bereft of any other evidence that Respondent's conduct with respect to this incident harbored secondary objectives. Therefore, I conclude that Respondent's picketing at Peckham at Portchester was not violative of the Act, *Operating Engineers Local 181 (Steel Fab)*, 292 NLRB 354, 357 (1989); *Los Angeles Building Trades Council (Sierra South Corp.)*, 215 NLRB 288, 291 (1974), and that Respondent neither unlawfully induced Peckham's employees, nor unlawfully threatened Peckham at that site, as alleged in the complaint.

There, I recommend that the allegations of the complaint with respect to these assertions be dismissed.

C. *The EPS Incident*

The complaint alleges that Respondent in furtherance of its dispute with EPS, through its shop steward, Valentine instructed employees to engage in a work stoppage at Peckham's Bedford Hills facility. No evidence was presented that Valentinue issued any instructions to employees of Peckham, much less instructions to engage in a work stoppage. Indeed, I note that the General Counsel makes no reference in her brief to such an allegation. Accordingly, I recommend dismissal of this paragraph of the complaint.

However, Doyle's statements to Brown that Respondent would not allow EPS to operate at Peckham's facility unless it had a 456 driver on the truck, and that unless Peckham tells EPS to do so, he would shut the Peckford facility down, are unlawful.

Such threats by Respondent's highest official to a representative of Peckham, a neutral employer, constitutes clear violation of Section 8(b)(4)(ii)(B) of the Act. *Sheet Metal Workers Local 27 (Camcon)*, 292 NLRB 1046 (1989); cf. *Iron Workers Local 29 (Hoffman Construction)*, 292 NLRB 562, 582 (1989), *Del Guidice*, supra. I so find.

It appears that even accepting Doyle's version of his conversation with Brown, his remark would be considered unlawful. Thus where a union makes an unqualified threat to a neutral general contractor to picket a jobsite where an offending primary employer would be working, and has reason to believe that persons other than the primary would be at work on the site, it has an affirmative obligation to qualify its threat by clearly indicating that the picketing would conform to *Moore Dry Dock* standards or otherwise be in uniformity with Board law. *Iron Workers Local 118 (Tutor-Saliba Corp.)*, 285 NLRB 162, 166 (1987); *Iron Workers Local 433 (United Steel)*, 280 NLRB 1325 (1986), enfd. denied in pertinent part 850 F.2d 551, 555–558 (9th Cir. 1988); *Food & Commercial Workers Local 506 (Coors Distributing)*, 268 NLRB 475, 478 (1983); *Sheet Metal Workers Local 418 (Young Plumbing)*, *237 NLRB 300, 312 (1976); cf. NLRB v. District Council of Painters*, 340 F.2d 107, 111 (9th Cir. 1965); *Bryant Air Conditioning Co. v. Sheet Metal Workers Local 541*, 472 F.2d, 969, 972 (8th Cir. 1973); See also *Plumbers Local 32 (Ramada, Inc.)*, 294 NLRB 501 fn. 1 (1989), where the Board found an unqualified threat to picket to be unlawful, and distinguished the 9th Circuits' decision in *Iron Workers Local 433*, supra, in that in the latter case the neutral employer testified that he understood the Union's threat to picket the job to be confined to picketing the primary employer's erection work.

In the instant case, even under Doyle's version, he threatened to put up a picket line at Peckham's jobsite, because EPS had a nonunion truck on the job. Doyle further admits that since there is only one entrance to the site, he predicted to Brown that most of the employees of other employers attempting to come into the site (90 percent in his opinion) would not cross the picket line. These remarks of Doyle would appear to be an unqualified threat to picket, without any assurances that the picketing would be conducted lawfully. To the contrary, Doyle's assertion that he communicated his belief to Brown, that other neutral employees would not cross the picket line, if anything suggests secondary objectives on the part of Respondent, and that it would not be picketing in conformance with *Moore Dry Dock* standards.

Turning to the picketing itself, Doyle's statement to Brown, coupled with Jedlicka's similar remark to Hauer, constitutes compelling evidence of Respondent's secondary objectives. Here, Respondent contacted Peckham, and once again as it did in the J&B situation, attempted to enmesh Peckham in its dispute with EPS. Thus, the message communicated to Peckham was clear. Peckham must convince EPS to use a Local 456 driver to work at Peckham's jobsite, or the job would be shut down. In fact, when Peckham was not able to do so, the picketing that took place the next day, did as promised, shut the entire job down. In these circumstances, I conclude that, like the J&B incident, this conduct by Respondent tainted the picketing, and established that an object of the picketing was to force Peckham to cease doing business with EPS, in violation of Section 8(b)(4)(i) and (ii)(B) of the Act. *E. J. Doughterty*, supra; *Rollins*, supra; *L. G. Electric*, supra.

CONCLUSIONS OF LAW

1. Peckham Materials Corp. is an employer and a person engaged in commerce within the meaning of Section 2(1), (2), (6), and (7) of the Act.

2. Local 456, International Brotherhood of Teamsters, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. On or about June 5 and 6, Respondent threatened coerced and restrained Peckham with an object of forcing Peckham Co. to cease doing business with J&B Construction Co. in violation of Section 8(b)(4) and (ii)(B) of the Act.

4. On or about June 5, Respondent induced and encouraged employees of Peckham to refuse to load blackstop for J&B, with an object of forcing Peckham to cease doing business with J&B, in violation of Section 8(b)(4)(i) and (ii)(B) of the Act.

[4] Although some of the pickets remained at Peckham for about 15 minutes after Riccardi's truck left, they were not wearing picket signs at the time. This brief period of time at Peckham even absent Ricardi's presence, by the pickets without signs, can hardly be construed as violative of *Moore Dry Dock*, or demonstrative of an unlawful objective.

5. On or about June 5, Respondent picketed at Peckham's Bedford Hills location, with an object of forcing Peckham to cease doing business with J&B, in violation of Section 8(b)(4)(i) and (ii)(B) of the Act.

6. On or about November 27, Respondent threatened, restrained, and coerced Peckham with an object of forcing Peckham to cease doing business with Environmental Products and Services, Inc., in violation of Section 8(b)(4)(ii)(B) of the Act.

7. On or about November 28, Respondent picketed at Peckham's Bedford Hills location with an object of forcing Peckham to cease doing business with EPS in violation of Section 8(b)(4)(i) and (ii)(B) of the Act.

8. The above described unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

9. Respondent has not otherwise violated the Act as alleged in the complaint.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices proscribed by Section 8(b)(4)(i) and (ii)(B) of the Act, I shall recommend that it cease and desist therefrom, and take certain affirmative action necessary to effectuate the purposes of the Act.

The General Counsel and the Charging Party contend that a broad remedial order is appropriate in the circumstances herein. Respondent, on the other hand, argues that the facts do not warrant the issuance of such an order.

In *Iron Workers Local 378 (N. E. Carlson Construction)*, 302 NLRB 200 (1991), the Board affirmed its policy to apply the *Hickmott Foods*, 242 NLRB 1357 (1979), standards to secondary boycott situations. Thus, a broad order is warranted ''where a Respondent is shown to have a probability to violate the Act or has engaged in such egregious and widespread misconduct as to demonstrate a general disregard for . . . fundamental statutory rights.'' *Hickmott*, supra. A determination of the need for a broad order in each case turns on the nature and extent of violations by the Respondent.

Where a union based on its conduct in a particular case, even absent a history of prior violations, has demonstrated a practice of organizing jobsites through unlawful secondary activity, and/or has exhibited a blatant disregard of the Act, the danger of recurrence and the enmeshing of other unnamed neutrals or taking action against other primary employers, warrants a broad remedial order. *Service Employees Local 77 (Thrust IV)*, 269 NLRB 629 (1982); *Carpenters Local 690 (Bob Moore Construction)*, 190 NLRB 609 (1971); *Teamsters Local 85 (Victory Transportation)*, 180 NLRB 709, 717–718 (1970).

In my view Respondent's conduct herein falls within the ambit of the above-cited authority, and warrants the imposition of a broad remedial order.

I note initially that although the incidents involved in the instant case arose out of one charge, were included in one complaint, and were heard in one hearing, I shall treat them as two separate incidents for the purposes of assessing proclivity and recidivism by Respondent. These incidents involved two separate primary disputes, which occurred nearly 6 months apart. Clearly the J&B incident could have been the subject of a separate charge, complaint and hearing, had Peckham decided to file charges in June, but it did not do so because the dispute had been resolved. Therefore, it is appropriate to consider these incidents as two separate cases of similar unlawful conduct by Respondent within a 6-month period. Cf. *Operating Engineers Local 12 (Associated Engineers)*, 270 NLRB 1172, 1173 (1984).

In evaluating Respondent's conduct during these incidents, I note that on both of these occasions, its agents made statements to representatives of Peckham, as well as EPS, that Respondent intended to shut down the job at the facility of Peckham, a neutral employer. These remarks ''exhibited a blatant disregard of the Act and a clear willingness, if not eagerness to violate it.'' *Thrust IV*, supra at 629. See also *N. E. Carlson*, supra.

Moreover, these statements, as well as other remarks violative of the Act, such as Respondent's intentions not to allow the primary to be loaded at Peckham's premises, were made in both case by the same officials of Respondent, Business Agent Jedlicka, and President Doyle. See *N. E. Carlson*, supra. Indeed here, Doyle Respondent's president and chief operating officer was guilty of unlawful statements, which also tainted the picketing. This forcefully demonstrates that Respondent's unlawful activity of enmeshing secondaries is consistent with union policy and is likely to recur and affect other employers in the future. *Thrust IV*, supra.

The reasoning of the administrative law judge in *Victory Transportation*, supra, adopted by the Board without comment, is particularly applicable to Respondent's conduct herein.

> The Union's ''secondary'' activities are rooted in policies which go much beyond the employers involved here, and their employees, extending, as the repeated expressions of such policies in the record attest, to all employers who have occasion to employ individuals within the area the Union describes as its ''jurisdiction,'' in functions which the Union insists, under its policies, must be performed only under union membership conditions it prescribes. The point is not that such expressions to employers are of themselves unlawful, but that agents of the Union, as the evidence establishes, have evinced a disposition to enforce its ''jurisdictional'' directives with unlawful pressures against ''secondary'' employers, and disruption of the work of their employees. Because of the scope of these directives, and of the misconduct aimed at their enforcement, it is reasonable to anticipate that the Union, unless appropriately restrained, will engage in similar misconduct directed against any ''secondary'' employers who do not conform to its ''jurisdictional'' requirements. [Id. at 718.]

Accordingly, I conclude that as in *N. E. Carlson*, supra, Respondent has engaged in similar unlawful conduct within 1 year (here within 6 months), involving different employers, accompanying unlawful picketing with statements by the same two officials including its president, which demonstrate a blatant disregard for the Act. In these circumstances, I am convinced that ''without proper restraint Respondent is likely to engage in similar conduct in the future against employers other than those involved here.'' Id. at 4; *Thrust IV*, supra; *Bob Moore*, supra; *Victory Transportation*, supra. Therefore, based on Respondent's conduct in the instant case, I con-

clude that a broad order is warranted. See also *Thornhill Construction*, supra at 85.

Additionally, I agree with counsel for the General Counsel and the Charging Party that Respondent's prior conduct in *Teamsters Local 456 (Westchester Colprovia Corp.)*, JD–(NY)–115–182, affirmed by the Board without exceptions being filed, provides further support for such a conclusion. The judge therein found that respondent on May 26, 1982, unlawfully induced employees of a neutral employer not to load a truck picking up blackstop of the primary employer, with whom respondent had a dispute in violation of Section 8(b)(4)(i) and (ii)(B) of the Act. It is noteworthy that respondent raised the same defense in that case, that I here and the judge therein rejected, i.e., that the employees refused to load the trucks on their own without any instructions from Respondent.

While Respondent is correct that prior conduct that occurs over 5 years from the date of the current incidents, are too remote in time from the present proceeding to establish in itself a proclivity to violate the Act, *Operating Engineers Local 12 (Hensel Phelps Construction)*, 284 NLRB 246 (1987). See also *Gannett*, supra at 69, that does not mean that such prior incidents cannot be considered at all in assessing the propriety of a broad order.

Thus, in *Sheet Metal Workers Union Local 80 (Ciamillo Heating)*, 268 NLRB 4 (1982), the Board considered in evaluating the propriety of a broad order based on conduct in March 1983, prior violations by the union found in *Sheet Metal Workers Local 80 (Sise Heating)*, 236 NLRB 41 (1978), in July 1976 and September 1977. These prior violations were considered along with other more recent examples of unlawful conduct by the Union, as part of the Union's record which demonstrated a proclivity to violate the Act.

Similarly in the instant case, I believe it is appropriate to consider Respondent's conduct in the *Westchester* case, although the events occurred 8 years before the violations in question here. It is particularly appropriate to do so, since the conduct of Respondent therein is so similar to Respondent's conduct in 1990, in that once again Respondent sought to enforce its jurisdictional claims by means of unlawful secondary activity of inducing employees not to load blacktop. Thus, I conclude that consideration of the prior case, is further demonstrative of the conclusion that I have reached above by evaluating the two incidents in 1990; i.e., that Respondent has indicated a high probability of recidivism, that will likely unlawfully enmesh secondaries other than Peckham, or primaries other than EPS or J&B.

I would add in this connection that it is now appropriate to consider an administrative law judge's decision to which no exceptions have been filed in determining whether Respondent has demonstrated a proclivity to violate the Act. See *Associated Engineers*, supra, reversing prior law.

Therefore, based on the foregoing analysis and authorities, I conclude that a broad cease and desist order is appropriate and I shall so recommend.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondent, Local 456, International Brotherhood of Teamsters, AFL–CIO, Portchester and Bedford Hills, New York, its officers, agents, representatives, shall

1. Cease and desist from

(a) In any manner inducing or encouraging employees of Peckham Materials Corp. (Peckham) or any other person engaged in commerce or in an industry affecting commerce, to engage in a strike or refuse in the course of their employment to use, manufacture, process, transport, or otherwise handle work on any goods, articles, materials, or commodities, or to perform any services, where an object thereof is to force or require Peckham or any other person to cease doing business with J&B Construction Co. (J&B), Environmental Products Services, Inc. (EPS), or with any other person.

(b) In any manner threatening, coercing, or restraining Peckham or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is to force or require Peckham or any other person to cease doing business with J&B, EPS, or with any other person.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its business offices and all meeting halls copies of the attached notice marked ''Appendix.''[6] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Furnish the Regional Director with a sufficient number of signed copies of the notice for posting by Peckham, provided such employer is willing, at all places where notices to employees are customarily posted.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed as to all violations not found herein.

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[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''